IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

S.B.CRIMINAL MISC. PETITION NO. 970/2004
(Hans Raj & Anr. Vs. State of Rajasthan & Anr.)

Date of Order : 28/07/2006

PRESENT

HON'BLE MR. JUSTICE H.R.PANWAR

Mr. D.D.Chitlangi for the petitioners.
Mr. Ashok Upadhyay, public prosecutor for the State.
Mr. Pritam Solanki for the non-petitioner No.2.

BY THE COURT:-

By the instant criminal misc. petition under Section 482 Cr.P.C., the petitioners have assailed the order dated 11.6.2004 passed by Additional Sessions Judge No.1, Bikaner (for short 'the appellate court' hereinafter) in Criminal Appeal No.02/2002, whereby the order dated 21.11.2001 passed by Judicial Magistrate, Nokha (for short 'the trial court' hereinafter) granting benefit of probation in Criminal Case No. 87/98 was set aside and the matter was remanded to the trial court to pass a fresh order after hearing the petitioners and the prosecution in accordance with law.

I have heard learned counsel for the parties. Perused the orders passed by the appellate court as also by the trial court and record of the court below.

It appears that a challan was filed against both the petitioners for the offences under Sections 435 and 447 IPC and charges were framed by the trial court. The petitioners voluntarily pleaded guilty and accepted the guilt. On hearing the parties, on the quantum of sentence, the trial court instead of sentencing the petitioners at once to any sentence of imprisonment, released them on probation under Section 4 (1) of the Probation of Offenders Act, 1958. That order came to be challenged before the appellate court by the non-petitioner Bholuram and the appellate court set aside the order on the ground that petitioner Hans Raj has previously been convicted on 30.7.2001 in Criminal Case No.340/90 for the offences under Sections 452, 332, 353 and 427 IPC and the petitioner without disclosing this fact, stated before the trial court that it is his first offence and sought release on probation and the request of the petitioner was accepted by the trial court without verifying the fact that whether petitioner Hans Raj is previously convicted or not. In the appeal, it has not been disputed that petitioner Hans Raj was previously convicted vide judgment and order dated 30.7.2001 in the afore-noticed case and released on probation in

that case also. In the circumstances, therefore, the order of the appellate court remanding the matter to the trial court cannot be said to be erroneous on any count. It cannot be said that the order impugned would result in serious miscarriage of justice or abuse of the process of the court.

The petition has no force and is therefore, dismissed. Stay petition also stands dismissed. Record of the court below be returned forthwith.

(H.R.PANWAR),J.

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